ter so authorizes.[2] The question therefore is what powers were conferred on the bank in this case. The national banking act allows national banks to do business incidental to banking.[3] This might be construed to allow a bank to become a partner when according to the ordinary methods of that business such a course is necessary to realize on securities. Similarly a bank taking shares in another bank to collect a debt, becomes liable as a shareholder.[4] But to allow a bank to become a partner is going considerably farther because the bank is thus subjected to unlimited liability for partnership debts. The capacity to enter a partnership is so rarely conferred upon a corporation and is so dangerous to the safety of banks that the presumption against such capacity is very strong. The general words of this statute are hardly sufficient to grant so unusual a power.

If the bank could not become a partner it would follow that it had no capacity to own the shares. If therefore the capacity were lacking, the attempted transfer was not effective to pass title. Similarly an *ultra vires* purchase of stock in another bank has been held to give the purchasing bank no title.[5] The better view is, therefore, that the bank, having no title, incurred no liability for any partnership debts.

The view of the principal case is an illogical compromise between the two views suggested and is unsupported by authority. The idea of a several ownership of an undivided nine-fortieths interest is a conception difficult to grasp and apparently an innovation in the law.

CANCELLATION OF INSTRUMENTS ON WHICH ACTION AT LAW IS PENDING. — Although it is now almost universally held that fraud may be pleaded in bar of actions at law on written instruments, yet equity commonly gives the relief of compulsory surrender and cancellation.[1] Where there is an action at law already pending, however, the courts of equity are not agreed as to whether it is advisable to interfere. In those jurisdictions where by statute a defendant at law may compel his opponent to prosecute his action to a judgment, the rule of the United States Supreme Court[2] would seem to be adequate. Here the bill is simply dismissed, the suit at law being regarded as means sufficient to bring about justice between the parties. A recent decision of the United States Supreme Court rests on this view of the case. *Cable* v. *United States Life Insurance Co.*, 24 Sup. Ct. Rep. 74.

In jurisdictions where the defendant at law is not protected by the statute mentioned above, the question is more difficult. If the plaintiff at law fails to prosecute his action to a judgment, the plaintiff in equity is in no better position than he would have been if no action at law had been brought. Influenced by this view of the case, a number of jurisdictions allow the bill, enjoin the action at law, and decree the relief if it is warranted on the hearing.[3] It is obvious, however, that such a proceeding

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[2] Butler *v.* American Toy Co., 46 Conn. 136.
[3] U. S. Comp. Sts. 1901, § 5136.
[4] National Bank *v.* Case, 99 U. S. 628.
[5] California Bank *v.* Kennedy, 167 U. S. 362.

[1] Fuller *v.* Percival, 126 Mass. 381. *Contra*, Allerton *v.* Belden, 49 N. Y. 373.
[2] Grand Chute *v.* Winegar, 15 Wall. (U. S.) 373.
[3] Metler's Administrators *v.* Metler, 18 N. J. Eq. 270.

may involve an injustice to the plaintiff at law. He has been unnecessarily hampered in the enforcement of a legal right, if it appears that the plaintiff in equity is not entitled to the relief sought. A better disposition of the case, although not sustained by any considerable authority, has been suggested both in England and America.[4] This is merely to retain the bill without relief pending the speedy prosecution by the plaintiff at law of his action there. In the event of his failure so to do, the court of equity is in a position to proceed immediately to give relief. The court thus retains control of the situation without piling up the costs and without interfering with a speedy determination at law of the rights of the parties.

EXTENT OF THE PUBLIC EASEMENT IN CITY STREETS. — It is commonly stated that the easement of the public in land used for streets consists of the right to use the land for all reasonable public purposes to which a street is naturally fitted. Conversely the owner of the fee is held to retain all rights in the property not inconsistent with the full enjoyment of the easement by the public. It follows that if the latter uses the land for purposes not included within the scope of the original easement it is an infringement of the owner's rights, legally entitling him to compensation. As the standard governing the extent of the public easement is however continually broadening in its application under modern conditions, the landowner's actual rights are becoming more and more restricted, and tend to become identified with those of any other member of the general public.

The difficulty is to determine what is a reasonable use of the street for public purposes. How far can the public go in using a highway without imposing an additional servitude upon the land? In answering this question the courts have naturally distinguished between city streets and country roads on the ground that a city street has always been and may properly be subjected to greater burdens than a road in the country, since it affords a natural and appropriate channel through which necessities and conveniences peculiar to city life may be made accessible to the public.[1]

As to most uses to which city streets can legitimately be put the law is well settled. Thus the public may build sewers,[2] lay water-mains, and gas-pipes,[3] etc., in the highway without being required to compensate the owner of the fee. So horse and trolley cars may be operated and trolley poles and wires erected.[4] Telegraph and telephone poles, on the other hand, are generally held to impose an additional servitude;[5] and such is practically the universal rule in the case of steam railroads of the ordinary type. As to elevated railways the law is not yet settled, but probably the better view is that they entitle the landholder to compensation.[6] An important addition to the law on this general subject has been made by a late Massachusetts case which reaches the conclusion that a tunnel or subway for electric

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[4] Hoare *v.* Bremridge, L. R. 8 Ch. App. 22. See also Glastenbury *v.* McDonald, 44 Vt. 450.

[1] Chesapeake, etc., Co. *v.* Mackenzie, 74 Md. 36, 47.
[2] Cone *v.* City of Hartford, 28 Conn. 363.
[3] McDevitt *v.* People's, etc., Gas. Co., 160 Pa. St. 367.
[4] Taggart *v.* Newport Street Ry. Co., 16 R. I. 668.
[5] See 4 HARV. L. REV. 240.
[6] Story *v.* New York, etc., R. R. Co., 90 N. Y. 122.